

### REMARKS

Claim 18 is provisionally rejected under nonstatutory obviousness-type double patenting over claim 52 of application no. 10/503,217. The rejection is respectfully traversed. The remarks below regarding the 102 rejection are incorporated herein. Claim 52 of the '217 application does not disclose or suggest a composite waveform formed by the addition of sine components as required by claim 18 in the present case. While claim 52 mentions "component", the disclosure makes clear that this consists of a sequence of sine waves and not a composite wave formed by the addition of components as required and defined by the equations and language of claim 18 in the present case.

Claims 18, 20-24, and 26-42 stand rejected under 102(a) based upon Sailor WO03067231. The rejection is respectfully traversed. The previous remarks are incorporated by reference, but will not be repeated. The Examiner's "response to arguments" will be specifically addressed.

The Examiner states that Sailor 231's disclosure of "modulating the etching density periodically (i.e. a frequency)..." (emphasis by Examiner) "...with a pseudo sine wave..." (emphasis by Applicants) "between 11.5 and 34.6 mA/cm<sup>2</sup>" (emphasis by Examiner) anticipates the features of claim 18. Etching with "a pseudo sine wave" and modulating the amplitude as described on page 10 of Sailor is a sequence of sine waves having different amplitudes. Each sine wave in the sequence is "a sine wave", and does not disclose (or suggest) the claim 18 "etching waveform formed by the addition of at least two separate sine components" that is, as defined in Eq. (4) of claim 18, a "composite waveform used to drive the electrochemical etch". It is the composite waveform defined in claim 18 that is not disclosed or suggested by Sailor. The composite waveform enables the large number predetermined coding as was previously discussed. The Sailor publication discloses sequential coding with single component waves that can result in the multi-layer structures, but does not disclose or suggest the method of claim 18.

Separately, Sailor '231 does not qualify as prior art. The publication date of Sailor '231 is August 14, 2003. The invention as defined in claim 18 was reduced to practice prior to August 14, 2003. See, attached Sailor declaration. As a result, Sailor '231 was not "described in a printed publication in this or a foreign country, before the invention thereof by the applicant for patent" as required by 35 U.S.C. 102(a). This is a separate and complete basis to remove the rejection under 35 U.S.C. 102(a).

For all of the above reasons, Applicant believes that that present case is condition for allowance, and notice of the same is respectfully requested. Should the Examiner believe that any outstanding issues exist or that a teleconference would expedite prosecution, then the Examiner is invited to contact the undersigned attorney at the below-listed number.

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Respectfully submitted,  
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